the creation of a chose in action, for in the one case the transferrer loses at once all interest in the *res*, while in the other the obligor remains vitally interested, since he must meet the obligation. Upon this peculiar feature of choses in action, the common law idea that they could not be assigned probably rested. A promise to pay A was a promise to pay A only, and could not be made into a promise to pay B except with the consent of the promisor. To assign an obligation was to change it, and the early lawyers were unable to see how the promisor could be held liable on such an altered contract. Difficult as it was to escape the logic of this argument, mercantile convenience soon demanded transferability of certain kinds of obligations. Since the obligor's right to do only what he promised was the main objection to assignment, the old conception naturally gave way most rapidly in the case of promises to pay money, for the transfer of such an obligation could make little or no difference to the promisor.[1] Assignment even here was effected by giving to the assignee a power of attorney to collect the note in the name of the promisee. Although the assignee finally acquired the right to collect in his own name, it is suggestive of the true nature of assignment that his rights have still to be worked out through the assignor, so that, although a purchaser for value and without notice, he takes subject to all equities in favor of the maker.[2] So jealous of the latter's rights has been the law that even when perfect negotiability of notes was obtained by statute, it was confined to those on which the maker by words of negotiability had shown an express intention to make his promise general.[3] The growth of the assignability of contracts, other than promises to pay money, further illustrates the theory that the principal factor in determining whether a contract is assignable is whether it could make any difference to the promisor to perform to any other than the original promisee. Thus, while ordinarily the consent of the contractor to assignment is virtually presumed, if the contract involves reliance on the personal services of the promisee it clearly cannot be assigned.[4] It would seem, therefore, on principle, that a note should not be regarded as assignable contrary to an express declaration of the maker, unless mercantile convenience demands that a promise to pay money to "A only" shall be considered a promise to pay the whole world.[5]

BILLS OF LADING AS SECURITY FOR ADVANCES. — The possession of a bill of lading has from early times been universally held to determine the possession of the goods themselves.[1] In a similar manner the position of one who takes a bill of lading in his own name as security for advances depends upon the extent to which the form of the bill should operate to determine the title to the goods. Upon this point there is by no means the same agreement. The view taken by the courts [2] is that a bill of lading does or does not pass legal title according to the intention of the parties, its form being merely evidence of such intention. The view of merchants, on the other hand, considers the form of the bill as conclusive evidence of legal title. In de-

1 3 HARV. L. REV. 340.
2 Edge *v.* Bumford, 31 Beav. 247.
3 3 & 4 Anne, cap. ix. §§ 1–3.
4 Swarts *v.* Narragansett Electric Lighting Co., 59 Atl. Rep. 77 (R. I.).
5 See Edie & Laird *v.* East India Co., 1 Black. W. 295, 298.

1 Evans *v.* Marlett, 1 Ld. Raym. 271.
2 The Carlos F. Roses, 177 U. S. 655; Moakes *v.* Nicolson, 19 C. B. (N. S.) 290.

termining whether the intention of the parties or the understanding of merchants ought to be the test, it is to be noted that under the former, serious difficulties are encountered in defining the position of one to whom a bill of lading runs but who according to the intention of the parties has no title to the goods, since an innocent purchaser from him is held to get a good title.[3] This result indicates a partial recognition by the courts of the right to rely upon the form of the bill in accordance with mercantile usage. The importance of bills of lading in modern business transactions renders it highly desirable that the view of the courts should be extended to conform entirely with the understanding of merchants, as has been done in the case of bills of exchange. If then the intention of the parties is adopted as the test, one taking a bill of lading in his own name as security for advances would be either a pledgee or a mortgagee according to that intention.[4] If, however, the more desirable test of mercantile usage is adopted, he would in effect always be a mortgagee having a security title to the extent of his advances, while the consignee would retain an equitable property right in the goods.[5]

Whatever may be the relative merits of the foregoing views, it is submitted that either is preferable to a third view adopted in a recent Massachusetts case in which the holder of a bill of lading taken as security for advances is considered absolute owner of the goods. *Moors* v. *Drury*, 71 N. E. Rep. 810. Although the plaintiff in that case was perhaps neither pledgee nor mortgagee within the purview of the particular statute involved, nevertheless the court's position in treating him as absolute owner finds no support either on the ground of intention of the parties or on that of mercantile usage. It is obviously unjust that the real purchaser of the goods, who has the duty of insuring, and upon whom the risk of loss and the right of profit fall, should be denied any property right whatever and be given instead a mere contract right. Nor does this point seem to be settled by authority,[6] as the court is inclined to believe. Four cases are cited in which holders of bills of lading are regarded as owners of the property; but in none of them was the court called upon to decide whether this was an absolute ownership or ownership in the sense of a security title. The language in one case[7] is, indeed, broad enough to support the idea of ownership in the former sense, but in a second case[8] that question is expressly undetermined, while in each of the other two[9] the language of the court even seems to indicate the use of the term "ownership" in the latter sense.

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[3] Commercial Bank *v.* Armsby Co., 120 Ga. 74.
[4] *Cf.* Sewell *v.* Burdick, 10 App. Cas. 74.
[5] *Cf.* Drexel *v.* Pease, 133 N. Y. 129, 136.
[6] Drexel *v.* Pease, *supra*.
[7] New Haven Wire Co. Cases, 57 Conn. 352, 383.
[8] Moors *v.* Wyman, 146 Mass. 60, 62.
[9] Moors *v.* Kidder, 106 N. Y. 32, 44; Mershon *v.* Moors, 76 Wis. 502, 514.